

**OPINION
66-268**

March 14, 1966 (OPINION)

Mr. A. R. Nestoss

Deputy Superintendent

Public Instruction

RE: Schools - Involuntary Dissolution of Districts - Procedure

This is in reply to your letter of March 7, 1966, relative to the interpretation of Section 15-22-21 of the North Dakota Century Code, as amended. You state the following facts and questions:

Section 15-22-21 provides for the dissolution and attachment of school districts which meet the following conditions:

1. When any school district within the county has had its assessed valuation reduced to an amount which will no longer enable the district to raise sufficient funds to carry on normal school operations, or
2. When any school district within the county has not operated a school for the immediately preceding two years providing fifty percent of the pupils from such school district are not attending school in another state, or
3. Of the existence of territory not organized into a school district.

Amendments to this section in 1965 provide for approval of all dissolutions by the State Board of Public School Education and for an effective date for all dissolutions on July 1 next, following the approval of the dissolution by the State Board.

The questions to which your opinion is to be directed are as follows:

1. When may the county superintendent first officially notify the County Reorganization Committee of the existence of a school district or districts which meet the conditions mentioned?
2. If the district to be dissolved extends across the county line must the County Reorganization Committees of all counties involved be required to advertise and attend the public hearing provided by law, and to also give approval to the dissolution?"

In reply to your first question, the county superintendent may give notice of conditions 1 and 3 as listed above at any time these

conditions occur.

With respect to condition 2, it is our opinion that the county superintendent may give notice at any time after the date on which the district has not operated a school for two years.

While it has been traditional in this State to operate schools for a nine month period each year, extending approximately from September through May, there is no such statutory requirement. The statute requires a school to be in operation for a period of 180 days each year. See Section 15-47-33 of the North Dakota Century Code, as amended. The school year begins on the first day of July and closes on the thirtieth day of June of the following year. See Section 15-47-04. A school may be operated at any time during the year. The statute provides for the notice by the county superintendent of schools when any school district has not operated a school for the immediately preceding two years. This means for a period of two years immediately preceding the date of such notice by the county superintendent of schools. As an example, suppose a school district completes a term of school on May 31, 1963. They do not operate a school during 1963-64 and, in September of 1964 (ordinarily the beginning of the second year) they do not open a school. This does not justify the county superintendent in giving notice under condition 2 of Section 15-22-21, since the district may start a school at any time, although as a practical matter, it appears they will not. The two year period does not expire until May 30, 1965. Thus, in the example cited, the county superintendent would not give notice until May 31, 1965, that the school district has not operated a school for the immediately preceding two years.

With respect to your second question, Section 15-22-22 of the North Dakota Century Code, as amended, provides in part:

The county superintendent of schools upon order of the county committee for the reorganization of school districts shall notify the clerk of each school district adjoining any district with is to be dissolved pursuant to Section 15-22-21 and any unorganized territory recommended for attachment as therein provided, that a hearing will be held and the time and the place of the hearing by the county reorganization committee, for the purpose of determining to which school district or districts the dissolved or unorganized territory will be attached. Upon or after such hearing the county committee for the reorganization of school districts, shall by resolution order the district dissolved and its territory attached, or the unorganized territory attached to one or more adjoining school districts * * * If any of such adjoining districts is situated wholly or partly in a county other than that which included the district to be dissolved or the unorganized territory affected, any order attaching territory to such adjoining school district shall become effective only upon the adoption of a concurring resolution by the county committee for the reorganization of school districts of the other county in which it is situation.*
* * ."

You will note the above statute does not refer to the situation in which the district to be dissolved extends across county lines, but

only refers to the situation in which the districts adjoining the district to be dissolved are situated wholly or partly in a county other than that which included the district to be dissolved. However, this office has previously advised that in annexation proceedings in which the territory involved extends into two or more counties, both county committees must approve. See Section 15-27-05.

In this instance the statute requires the approval of all county committees if the adjoining districts are situated wholly or partly in a county other than that in which the district to be dissolved is situated. It would thus appear the intent is to require the approval of the committees of all counties in which the district to be dissolved is situated also.

Insofar as the giving of notice is concerned, it would be desirable if the notice was issued by both county committees involved. This would require notice to the county committee by the respective county superintendents. However, if only one county is notified, we believe they may issue the notice, but the county superintendent and county committees of the other counties involved should be notified prior thereto.

In summary, it is our opinion:

1. In those instances in which the district is to be dissolved for failure to operate a school for the immediately preceding two years, the county superintendent cannot issue the notice until the complete two year period has expired. In those instances in which the district is to be dissolved due to reduction of the assessed valuation to an amount which will no longer enable the district to raise sufficient funds to carry on normal operation or in which territory not organized into a school district is to be attached to adjoining districts, the notice may be given whenever these situations occur.
2. If the district to be dissolved extends across the county line, it is desirable, but not necessary, that the County Reorganization Committees of all counties involved issue the notice and attend the public hearing provided by law. It is necessary that the County Reorganization Committees of all counties involved approve the dissolution and attachment.

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